

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

<b>DWAYNE BAKER,</b>	)	<b>CASE NO. 7:18CV00620</b>
	)	
<b>Petitioner,</b>	)	
	)	<b><u>MEMORANDUM OPINION</u></b>
<b>v.</b>	)	
	)	
<b>HAROLD CLARKE,</b>	)	<b>By: Hon. Jackson L. Kiser</b>
	)	<b>Senior United States District Judge</b>
<b>Respondent.</b>	)	

Petitioner Dwayne Baker, a Virginia inmate proceeding pro se, filed two motions for judgment for default. For the reasons stated below, both motions will be denied.

Baker filed this action as a petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254. I summarily dismissed the petition, and Baker filed a timely appeal to the United States Court of Appeals for the Fourth Circuit. The Fourth Circuit dismissed the appeal as interlocutory. The Court remanded the case and directed me to address Baker's claim that prison officials disciplined him for his physical and mental disabilities in violation of his Eighth Amendment right against cruel and unusual punishment.

Baker thereafter filed the motions for default judgment, asserting that Clarke had:

failed to file and serve an answer to Petitioners [sic] Eighth Amendment claim within twenty (20) days of service of the complaint and failed to state a legal defense to Petitioner's Eighth Amendment claim during the Habeas Corpus proceedings, thus entitling petitioner to an entry of default and judgment by default.

(Mot. for J. by Default at 1, ¶ 2, ECF No. 35; see also Mot. for J. by Default at 1, ¶¶ 2, 4, ECF No. 38.)

Contrary to Baker's assertions, Clarke timely filed a response to the petition, in the form of a motion to dismiss, on January 15, 2019. (Mot. to Dismiss, ECF No. 7.) Accordingly, Clarke is not in default and Baker is not entitled to default judgment.

Remand by the Court of Appeals is not the initiation of a new petition. Rather, the appellate court identified a single issue not clearly addressed in the District Court's first opinion and returned the matter to this court to clarify its opinion on that issue. The appellate court did not indicate how the issue should be decided, only that it needed to be addressed. Accordingly, the matter is now in the breast of the court to be determined in orderly fashion. Neither Baker nor the respondent needs to file any further pleadings, as both parties presented their positions in earlier pleadings. In fact, further filings will only delay the court's ability to complete the opinion on the remaining issue.

For the foregoing reasons, I will deny Baker's motions for judgment by default. An appropriate order will enter this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to petitioner and to counsel of record for the respondent.

**ENTERED** this 28th day of July, 2020.

/s/ Jackson L. Kiser  
SENIOR UNITED STATES DISTRICT JUDGE